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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF R. V.,)
A CHILD IN NEED OF SERVICES,)

ARCELIA MORENO,)
Appellant-Respondent,)

vs.)

No. 49A05-0704-JV-223

MARION COUNTY DEPARTMENT)
OF CHILD SERVICES,)
Appellee-Petitioner,)

and)

CHILD ADVOCATES, INC.,)
Co-Appellee (Guardian Ad Litem).)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Danielle Gregory, Magistrate
The Honorable Marilyn Moores, Judge
Cause No. 49D09-0612-JC-48782

November 14, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent, Arcelia Moreno, challenges the juvenile court's determination that her daughter R.V. is a Child in Need of Services ("CHINS"). Upon appeal, Moreno challenges the juvenile court's grounds for R.V.'s CHINS adjudication. Concluding that the juvenile court did not adequately state its reasons for the CHINS adjudication, we remand with instructions.

FACTS

In approximately November 2006, R.V., age fifteen at the time, reported to a teacher that she thought she was pregnant. R.V. later told Department of Child Services ("DCS") investigators that she had been sexually active with her mother Moreno's live-in boyfriend, Erik Flores, who was approximately twenty-seven years old. R.V. reported that this sexual activity with Flores began three to four months before she turned fifteen.

On December 4, 2006, after DCS received a report of this alleged sexual involvement, investigator Jason Kimble spoke with Moreno,¹ who apparently indicated she had had suspicions of such sexual involvement once before, but upon questioning R.V., was told it had not occurred. According to Kimble, Moreno further reported that she had told R.V. that if R.V. did develop feelings for Flores, Moreno would move out and let them have the house to themselves. Kimble testified that Moreno indicated her belief that "age should not matter," and that one "cannot rule the heart." Tr. at 16.

¹ Moreno does not speak English, so Kimble's communication with Moreno was through interpreter Lynette Garcia of the Child Advocacy Center through the Marion County Prosecutor's Office.

On December 4, 2006, DCS filed a petition requesting authorization by the juvenile court to file a CHINS petition and further requesting temporary custody of R.V. The court granted the petition that day. R.V. was placed in the Guardian Home, and Moreno was granted visitation. At a January 3, 2007 pre-trial hearing, R.V. was placed in foster care.

At the March 7, 2007 fact-finding hearing, Moreno testified consistent with her statements to Kimble that she was unaware of any sexual activity between R.V. and Flores until DCS became involved in the case. Moreno further testified that although she had had suspicions after discovering a phone message in which R.V. expressed love for Flores and called him “little cat,” she had questioned R.V., told R.V. to tell her if Flores touched her or “disrespected” her, and R.V. had responded that nothing was happening. Tr. at 33. Moreno did not dispute that she had been willing to move out of her house so R.V. and Flores could be together. According to Moreno, who is from Mexico, it is normal in her culture for fourteen-year-olds to marry. Moreno further testified, however, that if R.V. were returned to her home, she would protect her from having sex at such a young age, specifically with men eighteen and older, and that she would not invite men into her home. Moreno additionally pointed out that Flores has since left her home, returned to Mexico, and that she had cut ties with him, although she still had his car.

On March 7, 2007, the juvenile court found R.V. to be a CHINS. The court further ordered R.V. to be released from foster care and placed on temporary in-home trial visitation with Moreno. In its March 7, 2007 participation decree, the court ordered that, among other things, Moreno complete a home-based counseling program with R.V.,

participate in family counseling, and complete a parenting assessment. This appeal follows.

DISCUSSION AND DECISION

Upon appeal, Moreno challenges the sufficiency of the evidence to support the juvenile court's adjudication of R.V. as a CHINS. When we review a case where a trial court has entered findings of facts and conclusions thereon, we will not set aside the judgment of the trial court unless it is clearly erroneous. *In re J.Q.*, 836 N.E.2d 961, 966 (Ind. Ct. App. 2005), *reh'g denied*. A trial court's findings, conclusions, and judgment are considered to be clearly erroneous only if a review of the whole record leads us to a definite and firm conviction that a mistake has been made. *Id.* In reviewing findings made by the trial court, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* Instead, we consider only the evidence and reasonable inferences drawn therefrom which support the judgment. *Id.*

The Fourteenth Amendment to the United States Constitution gives parents a right to establish a home and raise their children. *In re D.G.*, 702 N.E.2d 777, 781 (Ind. Ct. App. 1998). "A parent's interest in the care, custody, and control of his or her children is 'perhaps the oldest of the fundamental liberty interests.'" *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005) (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). "Indeed the parent-child relationship is 'one of the most valued relationships in our culture.'" *Id.* (quoting *Neal v. DeKalb County Div. of Family & Children*, 796 N.E.2d 280, 285 (Ind. 2003)). However, a parent's right to his children is

balanced against the State's limited authority to interfere for the protection of the children. *See D.G.*, 702 N.E.2d at 781.

In its petition, DCS listed grounds based upon both Indiana Code sections 31-34-1-1 and 31-34-1-3 (2006) as a basis for a finding of CHINS. We first observe that the juvenile court's grounds for the instant CHINS adjudication are not apparent from the record. With the exception of one statement regarding temporary visitation, the dispositional order consists entirely of boilerplate CHINS language which we have determined in the past is vague and makes it difficult for this court to review the juvenile court's adjudication. *See J.Q.*, 836 N.E.2d at 966. Further, the order in this case is internally inconsistent, stating both that a pre-dispositional report is waived and also that the pre-dispositional report is incorporated into the order as the court's findings.² Pursuant to Indiana Code section 31-34-19-10 (2006), the juvenile court shall accompany its dispositional decree with written findings and conclusions upon the record concerning, among other things, the court's reasons for the disposition. Failure by the juvenile court to make such clear findings of fact creates potential procedural due process problems for any subsequent termination proceedings. *See J.Q.*, 836 N.E.2d at 966-67.

As the parties do not dispute the sexual relationship between R.V. and Flores, who the juvenile court noted was charged with committing Class B felony sexual misconduct with a minor,³ it appears that the basis for this CHINS adjudication is Indiana Code section 31-34-1-3, which provides in pertinent part as follows:

² As DCS points out in its brief, the parties waived the pre-dispositional report in this case.

³ Ind. Code § 35-42-4-9 (2006).

(a) A child is a child in need of services if, before the child becomes eighteen (18) years of age:

(1) the child is the victim of a sex offense under:

(F) IC 35-42-4-9;

and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

In pronouncing R.V. to be a CHINS, the juvenile court stated the following:

At the time . . . the CHINS petition was filed, and in light of the statements that were made, I'm not sure if I'm interpreting the statements wrong either. What stands out to me the most are the cultural differences. And that a 14 year old would be allowed to have a relationship of that nature, even marry a man of that age but when you are in Rome, you do as the Romans do. When you're in the United States, you have to avail yourselves of the laws that are here and follow them, and abide by them. And I understand again that there are cultural differences. Those differences aren't acceptable here. I do believe that at the time of the filing of the CHINS petition, that [R.V.] was a child in need of services. Based on those cultural differences and the statement that Ms. Arcelia Moreno would have allowed her child to have, continue that relationship with Mr. Flores, she wasn't, she did not understand that that was prohibited here until after the intervention of the Department of Child Services. And so I'm entering a true finding with respect to the petition. But at the same time, I've heard nothing that requires this Court to continue the detention of this young lady. Department of Child Services has not offered, according to the testimony here of the young lady, and I didn't hear anything differently, that she's even participating in counseling at this time. That is necessary. I truly believe it's necessary, but at the same time I believe it can occur with this child in the placement of her mother. That those services can be, can occur, can be completed while she's placed in the care of her mother. Mr. Flores, while he has absconded himself from the United States, to Mexico, has still been charged with [B]-felonies, sexual misconduct with a minor. I'm comfortable that Ms. Moreno understands from this point forward at least, that this child is not to have any contact with Mr. Flores. That she is not to engage in any sexual activity, with the consent of her mother, with any person. And at this time, she's under age and she cannot give consent. But this Court also recognize[s] that this child has a will and a mind of her own. And that if she makes those decisions,

her mother is to try and make her best effort to protect her, but any decisions this child makes, [are] ultimately gonna be her responsibility. So she needs for her mother to continue giving her that guidance. But that appropriate guidance is gonna have to follow some counseling, and so that she knows what that guidance is and that both of them can avail themselves of all the knowledge before those types of decisions are made.

Tr. at 39-40.

Moreno's specific challenge to the juvenile court's CHINS adjudication is that it was based upon the facts as they existed at the time of the petition, when she was following claimed cultural values in Mexico, rather than the facts as they existed at the time of the hearing, after she understood cultural values in the United States. Moreno is correct that R.V.'s situation at the time the petition was filed is not the only factor relevant to the CHINS determination, and the juvenile court should also consider her situation at the time of the fact-finding hearing. *In re C.S., L.S., and M.S.*, 863 N.E.2d 413, 418 (Ind. Ct. App. 2007) (citing *In re D.T.*, 547 N.E.2d 278, 284 (Ind. Ct. App. 1989)), *trans. denied*.

In support of her argument, R.V. refers to *In re T.H.*, 856 N.E.2d 1247, 1251 (Ind. Ct. App. 2006) wherein a panel of this court reversed a CHINS adjudication upon finding that there were no grounds to support it. In questioning one of the grounds cited in support of the CHINS adjudication, the *T.H.* court observed that while the alleged ground that Father had failed to properly secure a loaded handgun likely endangered the children at one time, there was no showing at the hearing that the children continued to be endangered on this basis. *Id.* In the case at hand, Moreno similarly argues that while Flores's presence at the house and R.V.'s relationship with him demonstrated R.V. was

endangered at the time of the CHINS petition, the State made no showing that at the time of the hearing this danger continued.

Although the juvenile court appeared to consider the timing of the CHINS petition as its reference point in adjudicating R.V. a CHINS, and while it expressed confidence in Moreno's new understanding of American sexual mores at the time of the hearing, the court also appeared to conclude that the danger of Moreno's foreign sexual mores would nevertheless remain largely unchanged into the future without services and counseling. There is support in the record for such a conclusion. When asked whether she would now protect R.V. from having sex with men ages eighteen and older, and whether she would talk to R.V. about sex, Moreno's response was less than unequivocal, indicating she would not "keep on and keep on" and only that there would be "some communication" on that subject. Tr. at 35. Additionally, while Moreno indicated it was "impossible" for her to have men in her home again, she also stated she didn't "think" she would have men in the home again. Tr. at 35. Further still, as a practical matter, a grown woman willing to give up her own house so as not to interfere with the relationship between her fifteen-year-old daughter and a grown man would very possibly require significant time and "reprogramming" before she could be depended upon to understand and enforce certain contrary values in Indiana.

The limited findings of the juvenile court and its language during the hearing are such that we cannot make a determination as to the validity of the CHINS determination. Accordingly, we remand to the juvenile court with instructions to follow more

specifically the requirements of Indiana Code section 31-34-19-10 by including written findings and conclusions upon the record in its decree. *See J.Q.*, 836 N.E.2d at 966-67.

The cause is remanded with instructions.

NAJAM, J., and MATHIAS, J., concur.